IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6905 OF 2006

The City & Industrial Development
Corporation of Maharashtra & Ors. ...Petitioners

Versus

M/s.R.M.Mohite & Company & Ors. ...Respondents

Shri G.S.Hegde for the Petitioners.
Shri S.S.Patwardhan for the Respondent No.1.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 27, 2007.

P.C.:

1. Notice for final disposal was issued by this Court. The Petitioner is the original Plaintiff. The Petitioner filed an Application at Exhibit 43 for permission to lead secondary evidence of certain documents on the ground that a file containing original documents has been misplaced/lost. Application at Exhibit 46 was made seeking a direction against the Respondent-Defendant to produce certain documents mentioned therein. By the order impugned dated 03rd July, 2006 the said Applications have been rejected.

2. I have considered the submissions made by the learned counsel appearing for the parties. Considering the averments made in the Application at Exhibt 43, in my view, the said Application could have been considered

only after evidence was led by the parties as factual foundation will have to be laid by the Petitioner to the grounds mentioned in the Application by leading evidence. In so far as Application at Exhibit 46 is concerned, at this stage the Application was misconceived as the Petitioner has not given a notice to produce the documents to the Respondents. After giving a notice to produce the documents to the Respondents, depending upon their response, the Petitioner could have taken out appropriate Application in that behalf. The impugned order in so far as rejection of the Application at Exhibit 43 is concenred will have to be set aside. In so far as Application at Exhibit 46 is concerned, a liberty will have to be reserved to the Petitioner to give notice to produce documents to the Respondents and thereafter take out appropriate proceedings.

3. Hence, I pass the following order:

(i) The impugned Order dated 03rd July, 2006 in so far as it rejects Application at Exhibit 43 is quashed and set aside and the Application at Exhibit 43 is restored to the file. The trial Court will consider the said Application on merits after both the parties lead evidence at the time of trial.

(ii) Notwithstanding the rejection of Application at Exhibit 46, it will be open for the Petitioner to serve a notice to produce the documents which are referred to in the said Application at Exhibit 46 to the Respondents and to file an appropriate Application thereafter.

(iii) Writ Petition is partly allowed in above terms.

(iv) All contentions of the parties on merits of the suit are expressly kept open.

(v) There will be no orders as to costs.

JUDGE